

**RIGHT TO KNOW ADVISORY COMMITTEE
BULK RECORDS SUBCOMMITTEE
LEGISLATIVE SUBCOMMITTEE**

DRAFT AGENDA

December 8, 2011

10:00 a.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Review of LD 1465: recommendations
 - A. Timelines for Compliance with Requests
 - B. Notice of Public Proceedings
 - C. Form of Request and Response
 - D. Remedies for Violations (see FAQ update)
 - E. Public Access Officer
 - F. Public Access Ombudsman
3. Additional legislation issues
 - A. "Freedom of Access Act"
 - B. Future use of technology
 - C. Working papers public records exception
 - D. ?
4. Discussion of remaining bulk records issues
5. Other responsibilities assigned to Legislative Subcommittee
 - Status of Maine Public Broadcasting Network records under the Freedom of Access laws (Mike Brown)
 - Use of technology for the purpose of remote participation by members of public bodies
 - Drafting templates
 - Storage, management and retrieval of public officials' communications, especially email
6. Other?
7. Scheduling future subcommittee meetings?

Scheduled meetings:

Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

Adjourn

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(12/7/2011 9:08:00 AM)

**Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws
Governing Freedom of Access**

LD 1465	Subcommittee Recommendation
<i>Notice of Public Proceedings</i>	
<p>Sec. 2. 1 MRSA §406, as amended by PL 1987, c. 477, §4, is further amended to read:</p> <p>§ 406. Public notice</p> <p>Public notice shall<u>must</u> be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall<u>must</u> be given in ample time to allow public attendance<u>not less than 3 days prior to the public proceeding</u> and shall<u>must</u> be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall<u>must</u> be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.</p>	<p><i>Opposed; do not include</i></p>
<i>Form of Request and Response</i>	
<p>2-A. Form. <u>If a public record exists in electronic or magnetic form, the requester may request a copy of the public record in a paper, electronic, magnetic or other medium, specify the storage medium and request that the copy be provided by an electronic transfer by the Internet or other means.</u></p> <p><u>A. An agency or official shall provide a copy of the public record in the requested medium if:</u></p> <p style="padding-left: 40px;">(1) <u>The agency or official has the technological ability to produce the public record in that medium or can obtain the assistance necessary to produce the public record at a reasonable cost; and</u></p> <p style="padding-left: 40px;">(2) <u>The requester agrees to pay the agency's or official's costs to purchase and install any additional necessary computer software or hardware to accommodate the request and to copy the public record in a requested medium.</u></p> <p><u>B. If an agency or official cannot provide a copy of a public record in a requested medium, the agency or official shall identify every medium in which the public record can be provided for inspection and copying, which must include a paper copy, and the requester must identify the medium that is acceptable to the requester.</u></p>	<p><i>Alternative language proposed (with Bulk Records Subcommittee)</i></p> <p><i>See draft section 6 in new § 408-A, sub-§ 9</i></p>

**Right to Know Advisory Committee: Legislative Subcommittee
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LD 1465	Subcommittee Recommendation
<i>Remedies for Violations</i>	
<p>Sec. 6. 1 MRSA §410, as repealed and replaced by PL 1987, c. 477, §6, is amended to read:</p> <p>§ 410. Violations; injunction</p> <p>For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture <u>fine</u> of not more than \$500 may be adjudged.</p> <p>The Superior Court may issue an injunction to enforce the provisions of this chapter against any agency or official. A motion for an injunction is privileged in respect to its assignment for hearing and trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.</p>	<p><i>Opposed; do not include</i></p>
<i>Public Access Officer</i>	
<p>Sec. 1. 1 MRSA §402, sub-§1-B is enacted to read:</p> <p><u>1-B. Public access officer.</u> <u>"Public access officer"</u> means the person fulfilling the duties as described in section 413.</p>	<p><i>Amend to include requirement that governmental units (state agencies, counties, cities, towns) designate a FOA contact person and require FOA training for that person; remove other provisions</i></p> <p><i>See draft section 3 and sections 8 and 9</i></p>
<p>Sec. 7. 1 MRSA §412, as amended by PL 2007, c. 576, §2, is further amended to read:</p> <p>§ 412. Public records and proceedings training for certain elected officials and public access officers</p> <p>1. Training required. Beginning July 1, 2008, an <u>An</u> elected official <u>and a public access officer</u>, subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official <u>or officer</u> shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official <u>or the person is designated as a public access officer pursuant to section 413, subsection 1.</u> For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.</p> <p>2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:</p> <p>A. The general legal requirements of this chapter regarding public records and public proceedings;</p>	<p><i>Included in draft; see section 8</i></p>

**Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws
Governing Freedom of Access**

LD 1465	Subcommittee Recommendation
<p data-bbox="300 344 917 405">B. Procedures and requirements regarding complying with a request for a public record under this chapter; and</p> <p data-bbox="300 436 917 497">C. Penalties and other consequences for failure to comply with this chapter.</p> <p data-bbox="235 529 933 800">An elected official <u>or public access officer</u> meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.</p> <p data-bbox="235 831 933 1102">3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official <u>or public access officer</u> shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. <u>A public access officer shall file the record with the agency or official that designated the public access officer.</u></p> <p data-bbox="235 1134 933 1194">4. Application. This section applies to the following elected officials:</p> <p data-bbox="300 1226 488 1255">A. The Governor;</p> <p data-bbox="300 1287 917 1348">B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;</p> <p data-bbox="300 1379 917 1440">C. Members of the Legislature elected after November 1, 2008;</p> <p data-bbox="300 1472 917 1564">E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;</p> <p data-bbox="300 1596 917 1656">F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;</p> <p data-bbox="300 1688 839 1717">G. Officials of school units and school boards; and</p> <p data-bbox="300 1749 917 1898">H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created</p>	

**Right to Know Advisory Committee: Legislative Subcommittee
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<p>pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.</p> <p><u>This section also applies to a public access officer designated pursuant to section 413, subsection 1.</u></p>	
<p>Sec. 8. 1 MRSA §413 is enacted to read:</p> <p><u>§ 413. Public access officer; responsibilities</u></p> <p><u>1. Designation; responsibility.</u> <u>Every agency or official shall designate to an existing staff member the responsibility of serving as a public access officer to oversee responses to requests for public records under this chapter. The public access officer shall oversee the prompt response to a request to inspect or copy a public record.</u></p> <p><u>2. Training.</u> <u>A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.</u></p> <p><u>3. Purpose; schedule.</u> <u>A public access officer or other person acting on behalf of an agency or official may not inquire into the purpose of a request. A public access officer may inquire as to the schedule or order of inspection or copying of a public record or a portion of a public record under section 408.</u></p> <p><u>4. Uniform treatment.</u> <u>A public access officer shall treat all requests for information under this chapter uniformly without regard to the requester's position or occupation, the person on whose behalf the request is made or the status of the requester as a member of the media.</u></p> <p><u>5. Comfort and facility.</u> <u>The public access officer shall ensure that a person may inspect a public record in the offices of the agency or official in a manner that provides reasonable comfort and facility for the full exercise of the rights of the public under this chapter.</u></p> <p><u>6. Unavailability of public access officer.</u> <u>The unavailability of a public access officer may not delay a response to a request.</u></p>	<p><i>Amended in draft to reflect subcommittee's decision; see draft section 9</i></p>
<p><i>Public Access Ombudsman</i></p>	
<p>Sec. 9. Appropriations and allocations. The following appropriations and allocations are made.</p>	<p><i>Agreed to recommend funding for full-time position</i></p> <p><i>See draft section 10</i></p>

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ATTORNEY GENERAL, DEPARTMENT OF THE Administration - Attorney General 0310 Initiative: Provides funds for a part-time Assistant Attorney General position to act as the public access ombudsman and general operating expenses required to carry out the purposes of this Act. <table><tr><td>GENERAL FUND</td><td>2011-12</td><td>2012-13</td></tr><tr><td>POSITION-LEGISLATIVE COUNT</td><td>0.500</td><td>0.500</td></tr><tr><td>Personal Services</td><td>\$62,120</td><td>\$65,576</td></tr><tr><td>All Other</td><td>\$5,000</td><td>\$5,000</td></tr><tr><td>Total</td><td><u>\$67,120</u></td><td><u>\$70,576</u></td></tr></table>	GENERAL FUND	2011-12	2012-13	POSITION-LEGISLATIVE COUNT	0.500	0.500	Personal Services	\$62,120	\$65,576	All Other	\$5,000	\$5,000	Total	<u>\$67,120</u>	<u>\$70,576</u>	
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Timelines																
Sec. 3. 1 MRSA §408 , as amended by PL 2009, c. 240, §4, is further amended to read: § 408. Public records available for public inspection and copying 1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record <u>the time limits established in section 408-A.</u> An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time. <u>A person may request by telephone that a copy of the public record be mailed or e-mailed to that person.</u>	<i>Opposed to timelines as drafted; Agreed to language requiring an estimate of when agency or official will respond to request</i> <i>See draft section 6 in new § 408-A, sub-§ 3</i>															
2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought, <u>as long as the inspection, translation and copying occur within the time limits established in section 408-A.</u> <u>The agency or official may use a 3rd party to make a copy of an original public record, but a requester may not remove the original of a public record from the agency or official.</u>	<i>Opposed; change not included in draft</i>															
3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows. A. The agency or official may charge a reasonable fee to cover the cost of copying. B. The agency or official may charge a fee to cover the	<i>Change included in draft; see draft section 6 in new § 408-A, sub-§ 10, ¶ D</i>															

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<p>actual cost of searching for, retrieving and compiling the requested public record of not more than \$10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.</p> <p>C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.</p> <p>D. An agency or official may not charge for inspection.</p> <p><u>E. If the requester requests that the public record be mailed, the agency or official may charge a fee not greater than the actual cost of mailing the record.</u></p>	
<p>4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies <u>and the estimate must be provided within 3 business days of the request.</u></p> <p>5. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:</p> <p>A. The estimated total cost exceeds \$100; or</p> <p>B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.</p> <p>6. Waivers. The agency or official may waive part or all of the total fee if:</p> <p>A. The requester is indigent; or</p> <p>B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.</p>	<p><i>Opposed; change not included in draft</i></p>
<p>Sec. 4. 1 MRSA §408-A is enacted to read:</p> <p><u>§ 408-A. Timelines</u></p> <p><u>1. Availability; redaction; location; collection.</u> <u>A public record must be made available immediately upon request unless time is required to redact the record so as to allow inspection and copying of only those portions of the record containing information that is a public record or to locate and collect a record that is not in active use or that is in storage.</u></p>	<p><i>Opposed; not included in draft</i></p>

**Right to Know Advisory Committee: Legislative Subcommittee
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Governing Freedom of Access**

LD 1465	Subcommittee Recommendation
<p>2. <u>Certification.</u> If a public record is not available immediately, a public access officer shall promptly certify that fact in writing to the requester, provide an explanation for the delay and either provide an opportunity to inspect or copy the public record within 5 business days or mail or e-mail the public record within 5 business days.</p> <p>3. <u>Large or multiple requests.</u> If a large public record is requested or multiple public records are requested and the public access officer or a person acting on behalf of the agency or official cannot in the exercise of due diligence produce the entire record or multiple records within 5 business days after the request, the public access officer shall provide the portion of the public record or public records when available. The requester may waive this requirement and request to see the public record or public records requested as a whole when available.</p> <p>4. <u>Estimate.</u> If the cost to comply with a request to inspect or copy a public record is greater than \$100, an estimate must be provided within 3 business days of the request.</p> <p>5. <u>Failure to comply.</u> Failure to comply with this section may be treated as a denial of a request and is subject to the enforcement provisions of this chapter.</p>	
<p>Sec. 5. 1 MRSA §408-B is enacted to read:</p> <p><u>§ 408-B. Inspection by requester</u></p> <p>1. <u>Ten business days.</u> A requester shall complete an inspection of a public record within 10 business days after the record is made available for inspection. If the inspection is not completed within the 10-business-day period, a public access officer or a person acting on behalf of the agency or official shall inform the requester that a written request for additional time may be filed with the agency or official that has custody of the public record.</p> <p>2. <u>Additional periods.</u> An agency or official shall allow an additional 20 business days beyond the period in subsection 1 for a requester to review a public record if the requester filed a written request for additional time with the agency or official or its public access officer or a person acting on behalf of the agency or official. If the inspection is not completed upon the expiration of the additional 20 business days, the public access officer or person acting on behalf of the agency or official shall inform the requester that a 2nd written request for an additional 10 days may be filed with the agency or official that has custody of the public record.</p> <p>3. <u>Interruption of inspection.</u> The time allowed for inspection of a public record may be interrupted if the agency or</p>	<p><i>Opposed; not included in draft</i></p>

**Right to Know Advisory Committee: Legislative Subcommittee
Comparison of Current Law and LD 1465, An Act to Amend the Laws
Governing Freedom of Access**

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<u>official needs to use the public record. If an agency or official invokes this subsection, the public access officer, no later than 5 business days after the agency or official takes the record back, shall inform the requester in writing the dates that the public record will be available for the inspection to resume. The time allowed for an inspection is tolled during the period in which the public record is being used by the agency or official.</u>	

Bulk Records and Legislative Subcommittees
Possible draft language

Sec. 1. 1 MRSA §400 is enacted to read:

§400. Short title

This subchapter may be known and cited as the "Freedom of Access Act."

(Subchapter is currently §401 through §412)

Sec. 2. 1 MRSA §401-A is enacted to read:

§401-A. Public records; information technology policy

1. Policy. The new use of information technology to collect, maintain, store and retrieve public records may not reduce access to public records.

2. New information technology; considerations. Each agency shall consider the following in the purchase of and contracting for computer software and other information technology resources:

A. Maximizing public access to public records; and

B. Maximizing the exportability of public data while protecting confidential information that may be part of otherwise public records.

Sec. 3. 1 MRSA §402, sub-§1-B is enacted to read:

1-B. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

Sec. 4. 1 MRSA §402, sub-§3, ¶¶C-2 and C-3 are enacted to read:

Exceptions to "public records":

Current legislative working papers exception:

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;

Bulk Records and Legislative Subcommittees
Possible draft language

C-2. Proposed legislation and reports until publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by the Governor or any employee of the Governor's office to prepare proposed legislation or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the proposed legislation or reports are prepared or considered or to which the proposed legislation or report is carried over;

C-3. Proposed legislation, reports, records, working papers, drafts, interoffice and intraoffice memoranda prepared for review, information or consideration by a (governing) body or duly-authorized official until: publicly distributed or otherwise provided to persons not in the service of the (governing) body or duly-authorized official; received by a quorum of the (governing) body; or the duly-authorized official makes a final decision to put forward the policy proposal reasonably related to the records or makes a final decision to abandon a policy proposal reasonably related to the records;

Sec. 5. 1 MRSA §408 is repealed.

Sec. 6. 1 MRSA §408-A is enacted to read:

§408-A, Public records available for inspection and copying

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record within a reasonable time of making the request to inspect or copy the public record.

2. Clarification. An agency or official may request clarification concerning which public record or public records are being requested.

3. Acknowledgment; time estimate. The agency or official shall acknowledge receipt of the request within a reasonable period of time, and shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.

4. Refusals; denials. If (a body or?) an agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, the (body or?) agency or official shall provide written notice of the denial,

Bulk Records and Legislative Subcommittees
Possible draft language

stating the reason for the denial, within 5 working days of the request for inspection or copying by any person. [Currently part of §409, sub-§1, and currently uses the term "body" – what happens if we drop out?]

5. Schedule. Inspection, translation conversion and copying may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought. As used in this section, "reasonable office hours" includes all regular office hours of an agency or official. If a the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

6. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge for inspection.

7. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy.

A. A request need not be made in person or in writing.

B. The agency or official shall mail the copy upon request.

8. Compile or create. An agency or official is not required to create or compile a record that does not exist.

9. Electronically stored public records. An agency or official shall provide access to an electronically stored public record in the available medium of the requester's choice. An available medium is a printed document of the public record or the medium in which the record is stored, except that a computer file is not an available medium if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in that file.

A. An agency or official is not required to provide an electronically stored public record in a different medium, structure, format or organization, but may do so at the agency's or official's discretion.

B. If ~~translation is necessary~~ in order to provide for inspection or copying the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format, the agency or official may charge a fee to cover the actual cost of translation conversion.

Bulk Records and Legislative Subcommittees
Possible draft language

C. This subsection does not require an agency or official to provide a requester with access to a computer terminal.

10. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for copies of public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying.

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$10 \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

C. An agency or official may not charge for inspection.

D. The agency or official may charge for the actual mailing costs to mail a copy of a record.

11. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 12 applies.

12. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation conversion, search, retrieval, compiling and copying of the public record if:

A. The estimated total cost exceeds \$100; or

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

13. Waivers. The agency or official may waive part or all of the total fee if:

A. The requester is indigent; or

B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

Bulk Records and Legislative Subcommittees
Possible draft language

Sec. 7. 1 MRSA §409 is amended to read:

§409. Appeals

1. Records. ~~If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.~~

Sec. 8. 1 MRSA §412, as amended by PL 2007, c. 576, §2, is further amended to read:

§412. Public records and proceedings training for certain elected officials and public access officers

1. Training required. ~~Beginning July 1, 2008, an~~ An elected official and a public access officer, subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1. ~~For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with a request for a public record under this chapter; and
- C. Penalties and other consequences for failure to comply with this chapter.

Bulk Records and Legislative Subcommittees
Possible draft language

An elected official or public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. A public access officer shall file the record with the agency or official that designated the public access officer.

4. Application. This section applies to the following elected officials:

- A. The Governor;
- B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;
- C. Members of the Legislature elected after November 1, 2008;
- E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;
- F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;
- G. Officials of school units and school boards; and
- H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

This section also applies to a public access officer designated pursuant to section 413, subsection 1.

Bulk Records and Legislative Subcommittees
Possible draft language

Sec. 9. 1 MRSA §413 is enacted to read:

§413. Public access officer; responsibilities

1. Designation; responsibility. Each State agency, county and municipality shall designate an existing employee as its public access officer to serve as the contact person for that agency, county or municipality with regard to requests for public records under this chapter. *[add language about making name of contact available to public?? Need to mention that the contact person is not solely responsible for fulfilling request or that request has to be made to POA??]*

2. Training. A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.

Sec. 10. Appropriations and allocations. The following appropriations and allocations are made. *(Assumes April 1, 2012 effective date.)*

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration – Attorney General 0310

Initiative: Provides funds for one Assistant Attorney General position to serve as a Public Access Ombudsman.

GENERAL FUND	2011-12	2012-13
Position – Legislative Count	1.000	1.000
Personal Services	\$18,160	\$75,420
All Other	\$5,178	\$3,178
GENERAL FUND TOTAL	\$23,338	\$78,598

FAQ suggested updates 10-21-11

GENERAL QUESTIONS

What is the Freedom of Access Act?

The Freedom of Access Act ("FOAA") is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

Are federal agencies covered by the Freedom of Access Act?

No. The Freedom of Access Act does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the "Freedom of Information Act" applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

You can find the text of the Freedom of Information Act, 5 U.S.C. § 551 et seq., at: <http://www.usdoj.gov/oip/foiastat.htm> or you can find more general information on the Freedom of Information Act at: http://answers.usa.gov/cgi-bin/gsaict.cfg/php/enduser/stdadp.php?p_faqid=5940.

Who enforces the Freedom of Access Act?

Any aggrieved person may appeal to any Superior Court in the state to seek relief for an alleged violation of the Freedom of Access Act. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Relief can be in the form of an injunction issued by the court that directs the government body, agency or official to comply with the law, such as by providing access to a public proceeding or by making public records available for inspection or copying.

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. 1 M.R.S.A. § 410.

What are the penalties for failure to comply with the Freedom of Access laws?

A state government agency or local government entity whose officer or employee commits a willful violation of the Freedom of Access laws commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. 1 M.R.S.A. § 410. Under the current law, there are no criminal penalties for failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. 1 M.R.S.A. § 452.

FAQ suggested updates 10-21-11

Are elected officials required to take training on the Freedom of Access laws?

Yes. Beginning July 1, 2008, elected officials must complete a course of training on the requirements of the Freedom of Access laws.

Which elected officials are required to take Freedom of Access training?

Elected officials required to complete the training include:

- the Governor
- Attorney General, Secretary of State, Treasurer of State and State Auditor
- Legislators elected after November 1, 2008
- Commissioners, treasurers, district attorneys, registers of deeds, registers of probate and budget committee members of any county
- Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments
- Officials of school units and school boards
- Officials of regional or other political subdivisions, including officials of water districts, sanitary districts, hospital districts, transit districts or regional transportation districts.

What does the training include?

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
- the penalties and other consequences for failure to comply with the law

Elected officials can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all of this information but may include additional information.

FAQ suggested updates 10-21-11

Do training courses need to be certified by the Right to Know Advisory Committee?

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

How do elected officials certify they have completed the training?

After completing the training, elected officials are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the elected official or filed with the public entity to which the official was elected. A [sample training completion form is available](#) (This file requires the free [Adobe Reader](#)).

PUBLIC RECORDS

What is a public record?

The Freedom of Access Act defines "public record" as "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business". A number of exceptions are specified. (See the discussion of exemptions below) [1 M.R.S.A. § 402 \(3\)](#).

Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?

No. The Freedom of Access Act provides that "every person" has the right to inspect and copy public records. [1 M.R.S.A. § 408 \(1\)](#).

How do I make a Freedom of Access Act request for a public record?

See the [How to Make a Request page on this site](#).

Is there a form that must be used to make a Freedom of Access Act request?

No. There are no required forms.

Does my Freedom of Access Act request have to be in writing?

No. The Freedom of Access Act does not require that requests for public records be in writing. However, most bodies and agencies ask individuals to

FAQ suggested updates 10-21-11

submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

What should I say in my request?

In order for the body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely—preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for “all records on landfills” is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for “all records identifying landfills within 20 miles of 147 Main Street in Augusta” is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion. You might instead consider requesting any record that identifies “all active landfills in Augusta” or “all active landfills in Kennebec County.” It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

Does an agency have to acknowledge receipt of my request?

Yes. An agency or official must acknowledge receipt of a request within a reasonable period of time. 1 MRSA § 408 (1).

Can an agency ask me for clarification concerning my request?

Yes. An agency or official may request clarification concerning which public record or public records are being requested. 1 MRSA § 408 (1).

When does the agency or official have to make the records available?

The records must be made available “within a reasonable period of time” after the request was made. 1 M.R.S.A. § 408 (1). The agency or official can schedule the time for your inspection, translation and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency or official. 1 M.R.S.A. §§ 408 (1) & (2).

FAQ suggested updates 10-21-11

Does an agency have to produce records within 5 days of my request?

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. 1 MRSA § 408 (1). Agencies must respond in writing within 5 working days only if your request is denied in whole or in part. 1 MRSA § 409 (1).

Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?

The Freedom of Access Act only requires the agency or official to make the records available to you for inspection and copying, it does not require the agency or official to mail records. However, depending on the volume of records produced in response to your request, some agencies or officials may be willing to mail copies to you. The agency may charge a reasonable fee to cover the cost of making the copies for you. 1 M.R.S.A. § 408 (1) & (3)(A).

When may a governmental body refuse to release the records I request?

The Freedom of Access Act provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records. 1 M.R.S.A. § 402 (3)(A)-(O).

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the Statutory Exceptions List. While this listing may not be totally complete, it contains the vast majority of exceptions to the Freedom of Access Act.

What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the Freedom of Access Act. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

Does an agency have to explain why it denies access to a public record?

FAQ suggested updates 10-21-11

Yes. When an agency denies access to a public record, it must provide the reason for its denial in writing within 5 working days of the date of the Freedom of Access Act request. 1 M.R.S.A. § 409 (1).

What can I do if I believe an agency has unlawfully withheld a public record?

If you are unsatisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 5 working days of your receipt of the written notice of denial, to any Superior Court within the state. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

May a governmental body ask me why I want a certain record?

The Freedom of Access Act does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself. An agency or official may request clarification concerning which public record or public records are being requested. 1 M.R.S.A. § 408 (1).

Can I ask that public reports or other documents be created, summarized or put in a particular format for me?

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request.

Similarly, a public officer or agency is not required to produce a record in an alternate format if the record can be made available for public inspection and copying in the format in which it exists. If the record requires translation in order for it to be made available for public inspection and copying, the agency or official must translate the record but can charge you a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

I asked a public official a question about a record, but he/she didn't answer. Is he/she required to answer my question?

No. A public officer or agency is not required under the Freedom of Access Act to explain or answer questions about public records. The Act only requires officials and agencies to make public records available for inspection and copying.

What records must a public officer or agency keep, and how long do they have to keep them?

The Generally, the Freedom of Access law does not control what records must be retained or for how long they must be retained. Public officers and

FAQ suggested updates 10-21-11

agencies are required to keep all records made or received or maintained by that officer or agency in accordance with other law or rule. 5 M.R.S.A. § 92-A (5) (This file requires the free [Adobe Reader](#)).

However, the Freedom of Access law does require that a public body keep a summary of its public proceedings. The summary must include: the date, time and place of the proceeding; the members of the public body, recorded as either present or absent; and all motions and votes taken, by individual member if the vote is by roll call. The summary can be in any medium, including audio, video and electronic. This requirement applies to public bodies that do more than serve in an advisory capacity. 1 M.R.S.A. § 403 (2)

How long records must be kept depends on the type of record and the value of the record's content. The [Maine State Archives](#) works with state and local governments to establish rules for the retention and disposition of government records, including the length of time that certain records need to be preserved by the agency before they are either destroyed or sent to the Maine State Archives for long-term or permanent retention.

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from the Freedom of Access Act, it constitutes a "public record". 1 M.R.S.A. § 402 (3).

Can an agency charge for public records?

There is no initial fee for submitting a Freedom of Access Act request and agencies cannot charge an individual to inspect records. 1 M.R.S.A. § 408 (3)(D). However, agencies can and normally do charge for copying records. Although the Freedom of Access Act does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". 1 M.R.S.A. § 408 (3)(A).

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. The Act authorizes agencies or officials to charge \$10 per hour after the first hour of staff time per request. 1 M.R.S.A. § 408 (3)(B). Where translation of a record is necessary, the agency or official may also charge a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

FAQ suggested updates 10-21-11

The agency or official must prepare an estimate of the time and cost required to complete a request and if the estimate is greater than \$20, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds \$100 or if the requester has previously failed to pay a fee properly assessed under the Freedom of Access Act. 1 M.R.S.A. § 408 (4) & (5).

I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?

The agency or official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if release of the public record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. 1 M.R.S.A. § 408 (6)

Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?

No. A public body is required to make available for inspection and copying (subject to any applicable exemptions) only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

PUBLIC PROCEEDINGS

What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. 1 M.R.S.A. § 402.

What does the law require with regard to public proceedings?

The Freedom of Access Act requires all public proceedings to be open to the public and any person must be permitted to attend. 1 M.R.S.A. § 403.

FAQ suggested updates 10-21-11

When does a meeting or gathering of members of a public body or agency require public notice?

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. 1 M.R.S.A. § 406.

Can a public body or agency hold an emergency meeting?

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same (or faster) means used to notify the members of the public body or agency conducting the public proceeding. 1 MRSA § 406. The requirements that the meeting be open to the public, that any person be permitted to attend and that records or minutes of the meeting be made and open for public inspection still apply. 1 MRSA § 403.

Can public bodies or agencies hold a closed meeting?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. 1 M.R.S.A. § 405 (1)-(5).

Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the Freedom of Access Act, such as: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any body or agency subject to the Freedom of Access Act is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. 1 M.R.S.A. § 405 (2) & (6).

What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any Superior Court in the State. If the court determines the body or agency acted illegally,

FAQ suggested updates 10-21-11

the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. 1 M.R.S.A. § 409 (2). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Can members of a body communicate with one another by email outside of a public proceeding?

~~There is no legal prohibition against email communication between members of a public body outside of a public proceeding.~~

The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of the Freedom of Access law. 1 MRSA § 401.

~~However, email~~ Email or other communication among a quorum of the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." 1 MRSA § 402. The underlying purpose of the Freedom of Access law is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 MRSA § 401. Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 MRSA § 403. In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

Members of a body should refrain from the use of email as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. Email is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Email is a public record (likely even when sent using a member's personal computer) if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. 1 MRSA § 402, sub-§ 3. As a result, members of a body should be aware that all emails and email attachments relating to the member's participation are likely public records subject to public inspection under the Freedom of Access laws.

Can I record a public proceeding?

FAQ suggested updates 10-21-11

Yes. The Freedom of Access Act allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the Act. 1 M.R.S.A. § 404.

Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

The Freedom of Access Act does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.

Is the public body or agency required to keep running minutes or a record of a public proceeding?

There is no requirement under the Freedom of Access Act that a public body or agency keep running minutes during all public proceedings. The Act does require, however, that public bodies and agencies keep a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. 1 M.R.S.A. § 407 (1) & (2).

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. 5 M.R.S.A. §§ 8002 (1) and 9059.

Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, 1 M.R.S.A. §§ 403, 407; 5 M.R.S.A. § 9059 (3).

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PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act Concerning Fees for Users of County Registries of Deeds

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the registry of deeds offices provide a valuable public service in recording and maintaining the land records of the State; and

Whereas, current law allows the county commissioners to set fees for copying at only the cost of providing the copies; and

Whereas, the cost to the counties to maintain the information and to make it accessible cannot be adequately reimbursed by fees defined by copying cost; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 33 MRSA §751, sub-§14, as amended by PL 2009, c. 575, §2, is repealed.

Sec. 2. 33 MRSA §751, sub-§§14-B and 14-C are enacted to read:

14-B. Abstracts and copies. Making abstracts and copies of records at the office of the register of deeds as follows:

A. Five dollars per page for paper abstracts and copies of plans;

B. One dollar per page for other paper abstracts and copies; and

C. Fifty cents per page for digital abstracts and copies, except that the fee is 5¢ per page for copies of 1,000 or more digital abstracts and copies of consecutive records.

This subsection is repealed July 31, 2012;

14-C. Abstracts and copies. Beginning August 1, 2012, making abstracts and copies from the records, a reasonable fee as determined by the county commissioners for each category of abstracts and copies, such as paper copies, attested copies, copies obtained online and bulk transfers of copies. In setting a reasonable fee for each category of abstracts and copies, the commissioners shall consider factors relating to the cost of producing and making copies available, which may include, but are not limited to: the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs or other transmitting costs; amortized infrastructure costs; any direct equipment operating and maintenance costs; costs associated with media processing time; personnel costs, including actual costs paid to private contractors for copying services; contract and contractor costs for database maintenance and for online provision and bulk transfer of copies in a manner that

protects the security and integrity of registry documents; and a reasonable rate for the time a computer server is dedicated to fulfilling the request; and

Sec. 3. Legislative intent; retroactivity. The Legislature finds that the following fees charged by an office of a register of deeds for making abstracts and copies from records, whether in paper or digital form, including for bulk copies or transfers of such copies, between September 1, 2009 and the effective date of this Act are reasonable and in accordance with the legislative intent of Public Law 2009, chapter 575, section 2 and are expressly authorized: a fee of up to \$1.50 per page for paper copies and a fee of up to \$1.50 per page for digital copies. Nothing in this section may be interpreted as a legislative finding that a higher fee charged by an office of a register of deeds between September 1, 2009 and the effective date of this Act to persons who were not subscribers to the online services of a register of deeds is unreasonable. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this section applies retroactively to September 1, 2009.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

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APRIL 12, 2011

Margaret Reinsch

Senior Legal Analyst

Judiciary Committee

Right to Know Advisory

Committee

The Maine Public Broadcasting Network is Maine's largest statewide news and public affairs organization with administrative offices and production facilities for radio and television in Lewiston, Bangor, Augusta and Portland. The station's transmitters and translators are located throughout the state delivering programs to nearly all of Maine citizens. The organization employs 119 staff members. According to the organization's IRS 990 Form ending 6/30/10, MPBN net assets were \$15,473,227. According to MPBN's own audit ending June 30, 2010 it received government support of \$1,954,235 from the State of Maine, \$1,574,366 from the Corporation for Public Broadcasting and government grants of \$33,016.

MPBN comes under the FOA Act as "the board of directors of a non-profit, non-stock private corporation that provides statewide noncommercial public broadcasting services and any

of its committees and subcommittees” and as such under FOA’s public proceedings “means the transaction of any functions affecting any and all citizens of the state.”

Cove Writers, Inc. and Hometown News Service are news companies producing columns for Maine and other state’s newspapers. Hometown News Service is the longest serving continuous member of the State House Newspersons, the press corps with offices in the Cross Building. Both news organizations have as its president and chief journalist, Allen D. (Mike) Brown.

On December 15, 2010, Cove Writers, Inc. filed a FOA request to MPBN President James Dowe for certain financial information. **(See Copy Enclosed)**. A FOA request is mandated by a reply within five working days. No reply came within that period or in subsequent weeks although several attempts to reach President Dowe were futile until February 2011 with a phone call from John F. Isacke, Vice President and Chief Financial Officer which was 45 days from the original request and 40 days in violation of the FOA Act. I requested of Mr. Isacke to put his response in writing which he did with letter dated 2/3/11. **(See Copy Enclosed)**. Although certain MPBN financials were forwarded, two items (1) a copy of MPBN’s current roster of full-time employees with their job titles and ranges for pay grades, and (2) a current copy listing part-time and/or contract employees who received IRS Form 1099 including the amounts they received were omitted.

According to Mr. Isacke the two omitted items do not apply under the FOA Act.

On March 25, 2011, Cove Writers, Inc. filed a FOA to P. James Dowe, President, MPBN, requesting a copy of MPBN's IRS Form 1099-Misc. listing persons and/or companies or other individuals /entities including the amounts received. There was no response after five days. In fact, there was no response at all.

After searching the relevant history files of the FOA Act and the Right to Know Advisory Committee which was created by Public Law 2005, chapter 631, and which has the oversight and responsibility of recommending changes to the Judiciary Committee, I can find no exception that any of the requests in the original letter of December 15, 2010 to Mr. Dowe are confidential and therefore exempt as stated by Mr. Isacke.

However, if Mr. Isacke's presumption is correct, then there is a gross conflict in that although MPBN comes under FOA's "Proceedings" as Mr. Isacke admits, it does not under "Public Records." Therefore, it challenges the general purpose of the Maine FOA as "transactions of any functions affecting any and all citizens of the state" and specifically and effectively labeling all MPBN public records as confidential. Mr. Isacke did respond to requests for some information under "Public Records" but chose to withhold other information under "Public Records" therefore "picking and choosing" what public records to reveal to the public.

MPBN is Maine's only "non-profit corporation that provides statewide noncommercial public broadcasting services" and therefore specifically under Maine's Freedom of Access Act.

The Right to Know Advisory Committee should review MPBN's proprietary stance on Public Records in view of its tremendous media influence in Maine and as the recipient of nearly two million annually of taxpayer funds. If Mr. Isacke is correct then MPBN is under Maine's FOA Act in name only and escapes public access to all of its public records or whatever it chooses to reveal.

On February 17, 2011 a column bylined by Mike Brown was printed in the Ellsworth American (**See Copy enclosed**) revealing financials of MPBN ending June 2009 with the questions of MPBN's cavalier illegal time responses and why if the State of Maine taxpayers were contributing nearly \$2 million to a non-profit, private news corporation then why it did not come fully under the FOA Act?

Efforts are current and continuing to obtain full compliance from MPBN but so far it refuses to release requested information under Maine's Freedom of Information law claiming confidentiality of personnel records.

Enclosures:



Allen D. (Mike) Brown, President

Hometown News Service

State House Station 162

Augusta, ME 04333

Phone 287-4899

E-mail brown@midcoast.com

COVE WRITERS, INC.
INDEPENDENT SYNDICATION
78 CLIFF ROAD, SATURDAY COVE
NORTHPORT, MAINE 04849

TELEPHONE (207) 338-3419
FAX (207) 338-4992

December 15, 2010

Jim Dowe, President
Maine Public Broadcasting Network
1450 Lisbon Street
Lewiston, Maine

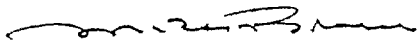
Dear Mr. Dowe:

Pursuant to Title 1, MRSA, Chap. 13, Maine's Freedom of Access Law, I am requesting the following information:

- 1.) The most recent audited financial statement of MPBC.
- 2.) A copy of MBPC's latest filed IRS 990 form.
- 3.) A copy of MPBC's current roster of full-time employees with their job titles and ranges for pay grades.
- 4.) A current copy listing MPBC's part-time and/or contract employees who received IRS Form 1099 including the amounts they received.
- 5.) The names of current MPBC Board of Trustees and their terms of office.

Thank you Mr. Dowe for your past cooperation and prompt reply to the above requests. Also if you have any comment on content and activity of your organization please include it your reply.

Sincerely,



Allen D. (Mike) Brown, President
Cove Writers, Inc.
Hometown News Service



Maine Public Broadcasting Network

1450 Lisbon Street, Lewiston, Maine 04240-3595 • 800-884-1717 • 207-783-9101 • Fax 207-783-5193

February 3, 2011

Allen D. Brown
Cove Writers, Inc.
78 Cliff Road, Saturday Cove
Northport, Maine 04849

Re: Your request of December 15, 2010

Dear Mr. Brown,

It was nice speaking with you on the phone yesterday. As I stated during our conversation, I do not believe that the items you have requested are all subject to Title 1, MRSA, Chapter 13 – Maine's Freedom of Access law. My beliefs in that regard are as follows:

- As I told you, I am not a lawyer, but my simple reading of Chapter 13 is that it pertains to Public Proceedings and to Public Records.
- With respect to Public Proceedings, the work of MPBN's Board of Directors, its committees and subcommittees are specifically included in §402 2. E. MPBN maintains a public file of all such meetings and those files are available for review, upon request, in our Lewiston office as provided under the Freedom of Access law.
- As it pertains to Public Records, it is my belief that MPBN is neither an agency of the state nor are its employees public officials. As such, it is my belief that the Public Records provisions of Chapter 13 do not apply to MPBN.

Within that context, my response to each of your questions follows:

1. Enclosed, for your convenience, is a copy of MPBN's audited financial statements for the years ended June 30, 2010 and 2009. This document is made available to the public on our website, www.mpbnet.net.
2. Enclosed, for your convenience, is a copy of MPBN's draft Form 990 for the year ended June 30, 2010. I will let you know if any substantive changes are made prior to its filing which is due February 15, 2011. This document is also made available to the public through both the IRS website and on MPBN's website, www.mpbnet.net.
3. The roster of full-time employees, their job titles and salary ranges is not a document we normally share and is not enclosed. However, the Form 990

Television • Radio • Education • Internet

With offices and studios in Bangor, Lewiston and Portland
mpbn.net

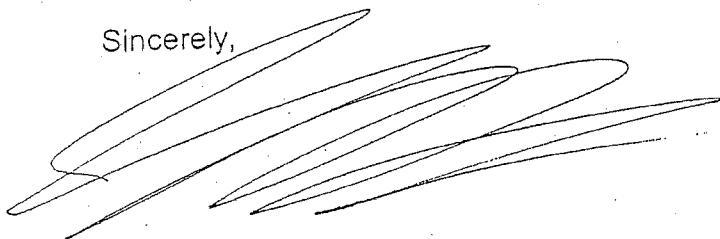
- referred to above discloses for all employees who are compensated at \$100,000 or higher, their name, title and total compensation.
4. The listing of part-time and/or contract employees who received an IRS Form 1099 and the amounts they received is not a document we normally share and is not enclosed.
 5. A listing of our Board of Trustees is also made available to the public on our website, www.mpbnn.net . A listing, including their terms of office is enclosed for your convenience.

I again apologize for the tardiness of my reply to your request.

If there is anything else I can do for you, do not hesitate to contact me directly. I have enclosed one of my business cards. It contains my direct contact information.

When and if an article results from this information response, I would appreciate receiving a copy. Thank you.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a cursive-style name.

John F. Isacke
Vice President and Chief Financial Officer

Cc: Alan L. Baker, Publisher, The Ellsworth American (w/o Enc)
P. James Dowe, President, Maine Public Broadcasting Network (w/o Enc)

MPBN's Violation of the Maine FOA Act

The Maine Freedom of Access Act lies at the heart of a democratic government. It grants the people of this state a broad right of access to public records with transparency, a fundamental principle of the Act. Within its many statute definitions is the right to a filer's response within five days.

On December 15, 2010 filer Hometown News Service requested of James Dowe, president of Maine Public Broadcasting Network, certain financial records of MPBN under the Freedom of Access Act. The response date was overdue on January 7, 2011 and the filer contacted the MPBN office and was informed that the request had been forwarded to the financial department. On January 17, there was still no response. As the filer contemplated court action under the Act there was a phone response on 2/3/11/ from John F. Isacke, MPBN vice president and chief financial officer, which was 45 days from the original response and some forty days in violation of the Freedom of Access Act.

MPBN comes under the Act's public proceedings definitions as "the board of directors of a non-profit, non-stock, private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees."

Although VP Isacke provided hard copy duplicates of certain financials--IRS 990 for 2009 and Audited Report, 2010 - he wrote in a cover letter that, "I do not believe that all the items requested are subject to the FOA Act." He further stated, "I am not a lawyer, but my simple reading of Chapter 13 as it pertains to Public Records is that neither is MPBN an agency of the state nor are its employees public officials."

What VP Isacke was referring to in the filers request was (1) a copy of MPBN's full-time employees with their job titles and ranges for pay grade and (2) a listing of contract employees who received IRS Form 1099 and the amounts they received. These two items have been in the filer's request to MPBN for nearly a decade and fully furnished even with specific names and specific salary although only a salary range was requested.

MPBN is one of the largest media corporations in Maine employing 119 employees and therefore has considerable impact on information, ideas and news content in programs provided to nearly all of Maine citizens through transmitters throughout the state.

MPBN is a \$15.5 million tax-exempt corporation according to its 2009 IRS report. A substantial revenue stream is public support, that is, taxpayer funds. In its 2010 revenue, the State of Maine, via taxpayers, contributed \$1,954,235 and the Corporation for Public Broadcasting, via taxpayers, \$1,574,366, other government grants of \$33,016, via taxpayers, for a total of \$3,561,617. The MPBN membership revenue was \$3,566,370 or only \$4,753 more than public taxpayer support.

According to its 2010 audit, the reported 118 anonymous (so stated VP Isacke) employees received \$5,001,699 in salaries and benefits. The only employee identified in the IRS 990 Form was President James Dowe with a salary of \$156,325 plus \$7,328 in retirement and other deferred compensation.

Phone conversations with VP Isacke indicated that the reason for the "delay" of response - he did not admit to violation of the Act - was that he was "too busy." Also, he objected to sending hard copy data when the internet was available. However, in its self-praising organization overview on its IRS 2009 Form it states precisely, "Any member of the general public can also request either verbally or in writing that these documents be sent to them."

As to VP Isacke's "simple reading" of the FOA Act that MPBN is not subject to Public Proceedings and Public Records under the Act in regard to employee salaries and pay ranges - that private opinion appears to be in conflict with the term "public proceedings meaning the transactions of any function affecting any and all citizens of the state." The fact that Maine citizens contributed \$1,954,235 to support MPBN salaries and benefits in 2010 should be considered a function.

Apparently there has been some shading in the transparency of MBPN since the open and full cooperation of MPBN President Jim Dowe through the years. The fact that MPBN was 45 days late and in violation of the FOA Act should be of considerable concern of all citizens and

especially the state legislature which appropriates millions in support of MPBN programming when the state itself has financial concerns of providing its citizens with basic needs of subsistence livability with the challenge of declining revenues.

Nothing so darkens the transparency of government and its ancillary providers of public information than the shadows of silence.

-30-

Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Using technology to conduct public proceedings

PART A

Sec. A-1. 1 MRSA § 403-A is enacted to read:

§403-A. Public proceedings through other means of communication

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

1. Requirements. A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section.

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. The physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member's physical attendance is not reasonably practical must be stated in the record of the public proceeding.

E. Each member of the body participating in the public proceeding is able to simultaneously hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

F. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

G. All votes taken during the public proceeding are taken by roll call vote.

H. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

I. The public proceeding is not a public hearing.

2. Voting. A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote:

A. On any issue for which materials providing additional information that may influence the member's decision are presented at the public proceeding but have not been provided to the member by the time of the vote; or

B. On any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

3. Exception to quorum requirement. A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

4. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.

Seek input of agencies before making legislative changes to statutory procedures below.

PART B

Finance Authority of Maine

Sec. B-1. 10 MRSA §971 is amended to read:

§971. Actions of the members

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with Title 1, section 403-A and the following.

1. Placement of call. A conference call to the members must be placed by ordinary commercial means at an appointed time.

2. Record of call. The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

3. Notice of emergency meeting. Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

Ethics Commission (any changes?)

Sec. B-2. 21-A MRSA §1002 is amended to read:

§1002. Meetings of commission

1. Meeting schedule. The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an

election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

2. Telephone meetings. The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

Emergency Medical Services Board

Sec. B-3. 32 MRSA §88, sub-§1, ¶D is amended to read:

§88. Emergency Medical Services' Board

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

1. Composition; rules; meetings. The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. The board may use video conferencing and other technologies in compliance with Title 1, chapter 13, subchapter 1, to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Workers' Compensation Board

Sec. B-4. 39-A MRSA §151, sub-§5 is amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology in compliance with Title 1, chapter 13, subchapter 1. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

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From LD 1792: RTK AC recommendations for FAME confidentiality statutes
(Deleted from LD 1792 by JUD in Committee Amendment)

Sec. 4. 10 MRSA §975-A, as amended by PL 2003, c. 537, §17 and affected by §53, is repealed.

Sec. 5. 10 MRSA §975-B is enacted to read:

§ 975-B. Freedom of access; confidentiality of records

The records of the authority are public records, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential:

A. Records containing any information acquired by the authority or a member, officer, employee or agent of the authority, from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the authority is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an individual.

B. A record obtained or developed by the authority that:

(1) A person, including the authority, to whom the record belongs or pertains has requested be designated confidential; and

(2) The authority has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the authority of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the authority prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the authority, or in connection with a transfer of property to or from the authority. After receipt by the authority of the application or proposal, a record pertaining to the application or proposal is not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

F. Any financial statement or business and marketing plan in connection with

From LD 1792: RTK AC recommendations for FAME confidentiality statutes
(Deleted from LD 1792 by JUD in Committee Amendment)

any project receiving or to receive financial assistance from the authority pursuant only to subchapters III or IV, except section 1053, subsection 5, if a person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and

G. Any record, including any financial statement, business plan or tax return obtained or developed by the authority in connection with the matching of potential investors with Maine businesses by the authority through its maintenance of a data base or other record keeping system. For purposes of this section, an application by a potential investor shall not be deemed to be an application for financial assistance.

The authority shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. Exceptions. Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the authority determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

D. Names of recipients of or applicants for financial assistance, including principals, where applicable;

E. Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;

F. Descriptions of projects and businesses benefiting or to benefit from the financial assistance;

G. Names of transferors or transferees, including principals, of property to or from the authority, the general terms of transfer and the purposes for which transferred property will be used;

From LD 1792: RTK AC recommendations for FAME confidentiality statutes
(Deleted from LD 1792 by JUD in Committee Amendment)

H. The number of jobs and the amount of tax revenues projected or resulting in connection with a project;

I. Upon the authority's satisfaction of its loan insurance liability, the amount of any loan insurance payments with respect to a loan insurance contract; and

J. Names of financial institutions participating in providing financial assistance and the general terms of that financial assistance;

K. Any information necessary to carry out section 1043 or 1063;

L. The annual report of the authority required pursuant to section 974.

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, except that the authority, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the authority has or may have an interest;

E. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records designated confidential by this section; and

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority.

G. If necessary in connection with acquiring, maintaining, or disposing of property; and

From LD 1792: RTK AC recommendations for FAME confidentiality statutes
(Deleted from LD 1792 by JUD in Committee Amendment)

H. Information to the extent the authority deems the disclosure necessary to the sale or transfer of revenue obligation securities or to the sale or transfer of bonds of the State.

RTK AC General Agency Confidential Individual and Business Records Template

Sec. X. XX MRSA §XXX-X, as amended by PL XXXX, c. XXX, §XX and affected by §XX, is repealed.

Sec. X. XX MRSA §XXX-X is enacted to read:

§ XXX-X. Freedom of access; confidentiality of records

The records of the [board, agency, authority, etc.] are public records, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential:

A. Records containing any information acquired by the [board, agency, authority, etc.] or a member, officer, employee or agent of the [board, agency, authority, etc.] from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the [board, agency, authority, etc.] is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an individual.

B. A record obtained or developed by the [board, agency, authority, etc.] that:

(1) A person, including the [board, agency, authority, etc.], to whom the record belongs or pertains has requested be designated confidential; and

(2) The [board, agency, authority, etc.] has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the [board, agency, authority, etc.] of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the [board, agency, authority, etc.] prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the [board, agency, authority, etc.], or in connection with a transfer of property to or from the [board, agency, authority, etc.]. After receipt by the [board, agency, authority, etc.] of the application or proposal, a record pertaining to the application or proposal is

RTK AC General Agency Confidential Individual and Business Records Template

not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

The [board, agency, authority, etc.] shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. Exceptions. Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the [board, agency, authority, etc.] determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, except that the [board, agency, authority, etc.], in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the [board, agency, authority, etc.] has or may have an interest;

E. In any litigation or proceeding in which the [board, agency, authority, etc.] has appeared, introduction for the record of any information obtained from records designated confidential by this section;

RTK AC General Agency Confidential Individual and Business Records Template

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority; and

G. If necessary in connection with acquiring, maintaining, or disposing of property.

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Notes and Policy Determinations for the RTK-AC Template

Subsection 1: Exceptions to Public Records

All records are public records except: Section 1, A through E.

Section 1A – States explicitly that all individual records are confidential, except that they can be given for a confidential and lawful purpose to a legislative committee (last paragraph in Subsection 1), and as provided in Subsection 2: Exceptions.

This transfers over the proposal from the RTK-AC original template the idea that individual records are presumed to be confidential. This distinction between businesses and individuals is not present in the original Fame statute, so there will need to be a policy determination as to whether to include it or not.

If a blanket confidential status is not included for “individuals,” then the committee should consider transferring over subsection 2c from the original Fame statute, which allows the authority discretion to determine if the release of a tax return or financial statement would violate “personal privacy.” However, if 1A of the template is included to provide that records of individuals are confidential, this section would likely not be necessary.

If 1A is not included, the only files that will be confidential will be the following:

- 1B: the owner of the information requests that it is confidential, AND the agency or authority determines that it would give another person a business advantage
- 1C: A financial statement or tax return.
- 1D: A record prepared by someone outside the agency, which contains a person’s credit report, or financial status.

1E, 1F, and 1G contain additional records that are confidential from the Fame statute, that can and are left off the general template for other agencies:

(1E) Any materials received relating to an application for financial assistance PRIOR to receipt of the actual application would be confidential. Note that once the application has been received, this material becomes a public record unless covered by one of the exceptions.

(1F) Fame specific financial statement or business plan records “pursuant only to subchapters III or IV, except section 1053, subsection 5.”

(1G) Fame specific records matching potential investors to Maine businesses.

Subsection 2, NOT Confidential

Resp #3 (B)

Subsection 2 contains the exceptions where records that would otherwise be confidential under Subsection 1, are made public, there are 3 common to both the previous RTK-AC templates and the original Fame statute, and cover most of the explicit disclosure requirements from the first section of the original Fame statute (975A), additional Fame specific disclosure requirements are highlighted, are removable, and were not included in the general template as they may not be appropriate for all agencies. They were added in an effort to transfer the clarity of Fame's original statute's "disclosure required" section. Some provisions were not transferred over, as they were conceptually covered by other provisions of the template.

Subsection 3: Agency has Discretion Whether to Release

Subsection 3 contains the specific situations where the agency CAN release information, if it determines it is appropriate under the Maine Right to Know laws.

Subsection 3 is another section that contains provisions from the Fame that might not be appropriate for other agencies: 3G, and 3H. 3G grants the authority the discretion to release information when necessary in connection with acquiring, maintaining, or disposing of property, and 3H grants discretion to release information when deemed necessary to the sale of securities or state bonds.

3G was left on the general template, and might be too broad, and so the committee should make a policy determination on this issue.

Office of Information Technology

Home → Policies, Standards & Procedures → E-Mail Usage and Management Policy

E-Mail Usage and Management Policy

Effective September 13, 2004

Introduction and Statement of Purpose

Electronic mail (e-mail) refers to the electronic transfer of information typically in the form of electronic messages, memoranda, and attached documents from a sending party to one or more receiving parties via an intermediate telecommunications system. E-mail is a core tool utilized by State agencies to improve the way they conduct business by providing a quick and cost-effective means to create, transmit, and respond to messages and documents electronically. Well-designed and properly managed e-mail systems expedite business communications, reduce paperwork, and automate routine office tasks thereby increasing productivity and reducing costs. These opportunities are, however, at risk if e-mail systems are not used and managed effectively.

The purpose of this policy is to promote the use of e-mail as an efficient communication and data gathering tool, to ensure that State agencies have the information necessary to use e-mail to their best advantage in supporting agency business, to avoid non-work-related distractions of employees, to avoid subjecting the State's e-mail system to computer viruses, and to otherwise avoid interfering with or damaging the effective functioning of the State's e-mail system. By establishing and maintaining compliance with a policy for appropriate use and management of e-mail, risks and costs to agencies can be mitigated while maximizing the potential of this communication tool.

Scope

This policy applies to all State employees, as well as contract staff, who use the State's electronic mail.

General Policy

It is the policy of Maine State Government that e-mail is used for internal and external communications that serve legitimate state government functions and purposes. Any personal use must be of an incidental nature and not interfere with business activities. Personal use must not involve solicitation, must not be associated with any outside business activity or personal gain, must not be libelous or defamatory, must not

violate the State of Maine Policy on Employee Harassment, must not potentially embarrass the State of Maine, its residents, its taxpayers, or its employees or be used for any unlawful purpose. Copyright restrictions and regulations shall be observed. The information communicated over agency e-mail systems is subject to the same laws, regulations, policies, and other requirements as information communicated in other written forms and formats and is not to be utilized for political purposes.

Each State agency is responsible for enforcing this policy and establishing management practices consistent with this policy that, among other goals:

- support agency business;
- reduce legal and other potential risks;
- define managerial authority over e-mail communications;
- describe the appropriate use of e-mail communications;
- train employees in e-mail use and policies; and
- provide for necessary records retention, accessibility, and protection.

Agencies with special requirements for information confidentiality (for example, confidential client records) may be required to establish additional safeguards to protect this data.

Access to E-mail Services

E-Mail services are provided to all appropriate staff and contractors within departments. To request access, contact the Bureau of Information Services or appropriate agency personnel. o -o

Privacy and Access

- **Mail messages are not personal and private. Managers, supervisors, and technical staff may access an employee's e-mail in accordance with the department security policy for reasonable business purposes, including but not limited to:**
 - for a legitimate business purpose (e.g., the need to access information when an employee is absent);
 - to diagnose and resolve technical problems involving system hardware, software, or communications; and/or
 - to investigate possible misuse of e-mail when a reasonable suspicion of abuse exists or in conjunction with an approved investigation.
- An employee, with the exceptions noted above, is prohibited from accessing another user's e-mail without his or her permission.
- *All e-mail messages including personal communications* may be subject to discovery proceedings in legal actions.

- All e-mail messages sent or received and which are not otherwise protected by law, are public documents and may be released to the public under the Freedom of Access Law.

Security

E-mail security is a joint responsibility of technical staff and e-mail users. Users must take all reasonable precautions, including safeguarding and changing passwords, to prevent the use of their e-mail account by unauthorized individuals.

Management and Retention of E-mail Communications

A . Applicable to all e-mail messages and attachments

Since e-mail is a communications system, messages should not be retained for extended periods of time.

Users should:

- remove or archive all e-mail communications in a timely fashion.
- delete records of transitory or little value that are not normally retained in record keeping systems as evidence of an agency's activity.

B. Applicable to records communicated via e-mail

E-mail created in the normal course of official business and retained as evidence of official policies, actions, decisions or transactions are records and are subject to the records management requirements documented by the Maine State Archives. (A copy of the Maine State Archives' guide to e-mail retention is attached.) Records communicated using e-mail need to be identified, managed, protected, and retained as long as they are needed to meet operational, legal, audit, research or other requirements.

For agency specific questions surrounding record retention requirements contact Records Management at the Maine State Archives for assistance.

Examples of messages sent by e-mail that typically are records include:

- policies and directives
- correspondence or memoranda related to official business
- work schedules and assignments
- agendas and minutes of meetings
- drafts of documents that are circulated for comment or approval
- any document that initiates, authorizes, or completes a business transaction
- final reports or recommendations

Some examples of messages that *typically do not constitute records* are:

- personal messages and announcements
- copies or extracts of documents distributed for convenience or reference
- phone message notes

Roles and Responsibilities

- Executive management will ensure that the policy is implemented by program unit management and unit supervisors.
- Unit managers and supervisors will develop and/or publicize record keeping practices in their area of responsibility including the routing, formatting, and filing of records communicated via e-mail. They will train staff in appropriate use, including appropriate personal use of e-mail that does not result in performance issues, and be responsible for ensuring the security of physical devices and passwords.
- Network administrators and internal control (and/or internal audit) staff are responsible for e-mail security, backup, and disaster recovery.
- Users are responsible for adherence to this policy.

Proper Usage

All e-mail users will understand and comply with this policy, including but not limited to:

- understand that personal use must be of an incidental nature only
- comply with agency and unit policies, procedures, and standards
- protect confidentiality
- be aware that sending e-mail of a political nature (supporting candidates, soliciting contributions, etc.) is against the law and subject to criminal penalties (5 U.S.C. §1501 et seq., and 5 M.R.S.A. §7056-A 5 M.R.S.A §1976)
- immediately delete any chain letters received through the State's e-mail system
- consider organizational access before sending, filing, or destroying e-mail messages.
- protect their passwords
- receive approval of supervisor and permission from the Commissioner of the Department of Administrative and Financial Services, or her designee, before sending state wide communications <http://inet.state.me.us/dafs/policies.htm>
- respond to e-mail in a timely fashion
- do not in any way use e-mail access or transmit prohibited content of a sexual nature
- delete any messages that may contain offensive material and report to management

- remove personal messages, transient records, and reference copies in a timely manner.
- not use e-mail for outside business activity or personal gain
- observe all copyright restrictions and regulations
- not use e-mail for any unlawful or illegal purpose
- not use e-mail to promote discrimination on the basis of race, religion, national origin, disability, sexual orientation, age, marital status, gender, or political affiliation
- not create e-mails that may be defamatory or libelous
- consider organizational access and retention requirements before sending, filing, or destroying e-mail messages
- be courteous and follow accepted standards of etiquette
- must not use the e-mail system to solicit for causes unrelated to state business
- must not knowingly send or receive e-mails that contain a virus

Violations of this policy

Any violation of this policy could result in disciplinary action up to and including termination.

Policy Review and Update

The Office of Chief Information Officer will periodically review and update this policy as new technologies and organizational changes are planned and implemented.

Questions concerning this policy should be directed to the Chief Information Officer.

Related Policies

Policy for Use of State E-mail System for Widespread Dissemination to State Employees <http://inet.state.me.us/dafs/policies.htm>

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Maine State Government
Dept. of Administrative & Financial Services
Office of Information Technology

Office of Information Technology Policy on Access to Data and Information on State Owned Computer Devices

I. Statement

The responsibility for responding to Freedom of Access Act^[1] requests for data or information that is hosted on state-owned computer devices falls to the State department and/or agency responsible for the collection and use of the data or information requested. The Office of Information Technology will provide assistance to the department or agency with searching for, identifying all data stored within OIT, retrieving, and/or compiling such data or information when requested to do so.

II. Purpose

This policy sets forth the respective responsibilities of State departments and agencies, and the Office of Information Technology, in responding to Freedom of Access Act requests for data or information that is hosted on state-owned computer devices.

III. Applicability

This policy applies to all requests for data or information presented to the Office of Information Technology (OIT).

IV. Responsibilities

A. The Chief Information Officer (CIO) will:

1. Immediately forward all requests for a department's or agency's data or information to the head of that department or agency, or their designee, for response. A notice will be sent to the requester confirming this action, and will include the contact information for the individual to whom the request was forwarded.
2. OIT will identify all medium where requested data may be stored and provide this information to the responding agency.
3. As requested, assign OIT staff to provide support to agencies in meeting their requests for information and data.

B. State departments and agencies, as required by the Freedom of Access Act^[2], are responsible for fulfilling requests for access to public records including information and data hosted on state-owned computer devices. All responses and decisions regarding the production of such information or data, such as the scope of the search, the redaction or withholding of information, the timing and cost of production, etc., are the sole responsibility of the department or agency.

V. Guidelines & Procedures

A. No OIT employee shall provide public access to data and/or information hosted on OIT computer devices without prior consultation with the department or agency that is the custodian of the data or information.

Resp #4 (B)

B. Freedom of Access Act requests received by OIT employees will be forwarded to the CIO who will forward to the appropriate department or agency head.

VI. Definitions

1. Computer Device - Computer device means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device^[3]. Common examples currently in use include laptops, personal computers, servers, and hand-held devices (including personal digital assistants (PDA), and cell phones).

VII. References

1. This policy supersedes the State of Maine Policy on Access to Public Records adopted by the Information Services Policy Board March 9, 1990.
2. M.R.S.A. Title 5, Section 1982^[4] Paragraph 9. Protection of Information Files reads in part "...All data files are the property of the agency or agencies responsible for their collection and use."

VIII. Document Information

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3. Adoption Date: Provisionally adopted on October 6, 2006 pending review by the IT Executive Committee. Reviewed and approved October 30, 2006.
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5. Review Date: February 9, 2011
6. Point of Contact: Kathy Record, Associate Chief Information Officer, Office of Information Technology, Statehouse Station #138, Augusta, Maine 04332-0138 (207) 624-9502
7. Approved By: Richard B. Thompson, Chief Information Officer
8. Position Title(s) or Agency Responsible for Enforcement: Richard B. Thompson, Chief Information Officer, Office of Information Technology
9. Legal Citation: 5 M.R.S.A. SECTION 1982 Paragraph 9 Powers and Duties of the Chief Information Officer; and 1 M.R.S.A. SECTION 408 Freedom of Access
10. Waiver Process: N/A

^[1] 1 M.R.S.A. § 401 *et seq.*, <http://janus.state.me.us/legis/statutes/1/title1sec401.html>

^[2] 1 M.R.S.A. § 408, <http://janus.state.me.us/legis/statutes/1/title1sec408.html>

^[3] 17-A M.R.S.A. § 431, <http://janus.state.me.us/legis/statutes/17-a/title17-asec431.html>

^[4] <http://janus.state.me.us/legis/statutes/5/title5sec1982.html>